

IC 32-30-6

Chapter 6. Nuisance Actions

IC 32-30-6-1

"Agricultural operation" defined

Sec. 1. As used in this chapter, "agricultural operation" includes any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for growing timber.

As added by P.L.2-2002, SEC.15.

IC 32-30-6-1.5

"Forestry operation" defined

Sec. 1.5. As used in this chapter, "forestry operation" includes facilities, activities, and equipment used to plant, raise, manage, harvest, and remove trees on private land. The term includes site preparation, fertilization, pest control, and wildlife management.

As added by P.L.82-2005, SEC.2.

IC 32-30-6-2

"Industrial operation" defined

Sec. 2. As added used in this chapter, "industrial operation" includes any facility used for the:

- (1) manufacture of a product from other products;
- (2) transformation of a material from one (1) form to another;
- (3) mining of a material and related mine activities; or
- (4) storage or disposition of a product or material.

As added by P.L.2-2002, SEC.15.

IC 32-30-6-3

"Locality" defined

Sec. 3. As used in this chapter, "locality" means the following:

- (1) For purposes of section 9 of this chapter, the specific area of land upon which an:
 - (A) agricultural operation; or
 - (B) industrial operation;is conducted.
- (2) For purposes of section 10 of this chapter, the following:
 - (A) The specific area of land upon which a public use airport operation is conducted.
 - (B) The airport imaginary surfaces as described in IC 8-21-10-8.
- (3) For purposes of section 11 of this chapter, the specific area of land upon which a forestry operation is conducted.

As added by P.L.2-2002, SEC.15. Amended by P.L.82-2005, SEC.3.

IC 32-30-6-4

"Public use airport operation" defined

Sec. 4. As used in this chapter, "public use airport operation" includes any facility used as a public use airport for the landing, take off, storage, or repair of aircraft.
As added by P.L.2-2002, SEC.15.

IC 32-30-6-5

"Vicinity of the locality" defined

Sec. 5. As used in this chapter, "vicinity of the locality" means the following:

- (1) Three (3) miles from the locality (as defined in section 3(2) of this chapter) of a public use airport operation that serves regularly scheduled air carrier or military turbojet aircraft.
- (2) One and one-half (1.5) miles from the locality of a public use airport operation that does not serve regularly scheduled air carrier or military turbojet aircraft.

As added by P.L.2-2002, SEC.15.

IC 32-30-6-6

Nuisance described and considered subject to an action

Sec. 6. Whatever is:

- (1) injurious to health;
- (2) indecent;
- (3) offensive to the senses; or
- (4) an obstruction to the free use of property;

so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.

As added by P.L.2-2002, SEC.15.

IC 32-30-6-7

Nuisance actions; plaintiffs; attorney's fees in certain actions

Sec. 7. (a) An action to abate or enjoin a nuisance may be brought by any person whose:

- (1) property is injuriously affected; or
- (2) personal enjoyment is lessened;

by the nuisance.

(b) A civil action to abate or enjoin a nuisance may also be brought by:

- (1) an attorney representing the county in which a nuisance exists; or
- (2) the attorney of any city or town in which a nuisance exists.

(c) A county, city, or town that brings a successful action under this section to abate or enjoin a nuisance is entitled to recover reasonable attorney's fees incurred in bringing the action.

(d) A person that successfully defends an action under this section is entitled to reasonable costs and attorney's fees incurred in defending the action.

As added by P.L.2-2002, SEC.15. Amended by P.L.82-2005, SEC.4; P.L.193-2014, SEC.1.

IC 32-30-6-8

Nuisance action; remedies

Sec. 8. If a proper case is made, the nuisance may be enjoined or abated and damages recovered for the nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-6-9

Agricultural and industrial operations; findings; continuity of operations; circumstances in which nuisance does not exist

Sec. 9. (a) This section does not apply if a nuisance results from the negligent operation of an agricultural or industrial operation or its appurtenances.

(b) The general assembly declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of this section to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

(c) For purposes of this section, the continuity of an agricultural or industrial operation shall be considered to have been interrupted when the operation has been discontinued for more than one (1) year.

(d) An agricultural or industrial operation or any of its appurtenances is not and does not become a nuisance, private or public, by any changed conditions in the vicinity of the locality after the agricultural or industrial operation, as the case may be, has been in operation continuously on the locality for more than one (1) year if the following conditions exist:

(1) There is no significant change in the type of operation. A significant change in the type of agricultural operation does not include the following:

(A) The conversion from one type of agricultural operation to another type of agricultural operation.

(B) A change in the ownership or size of the agricultural operation.

(C) The:

(i) enrollment; or

(ii) reduction or cessation of participation;
of the agricultural operation in a government program.

(D) Adoption of new technology by the agricultural operation.

(2) The operation would not have been a nuisance at the time the agricultural or industrial operation began on that locality.

As added by P.L.2-2002, SEC.15. Amended by P.L.23-2005, SEC.1.

IC 32-30-6-9.5

Frivolous nuisance actions; court costs; attorney fees

Sec. 9.5. (a) If a court finds that an agricultural operation that is the subject of a nuisance action:

(1) was not a nuisance under section 9 of this chapter and that the nuisance action was frivolous, the court shall award court costs and reasonable attorney's fees, to the defendant in the action; or

(2) was a nuisance under this chapter and that the defense of the nuisance action was frivolous, the court shall award court costs, including reasonable attorney's fees, to the plaintiff in the action.

(b) Reasonable attorney's fees under subsection (a):

(1) shall be calculated based on the reasonable and customary hourly rates charged in the county in which the action occurred; and

(2) may include fees for only one (1) attorney, no matter how many attorneys were actually employed by the party.

(c) The determination that an action was initiated or maintained frivolously may not be based on the mere fact that a party did not prevail.

As added by P.L.73-2012, SEC.1.

IC 32-30-6-10

Public use airport operation; purpose; circumstances in which nuisance does not exist; negligent operations

Sec. 10. (a) This section does not apply if a nuisance results from the negligent operation of a public use airport operation or the operation's appurtenances.

(b) It is the purpose of this section to limit the circumstances under which a public use airport operation may be a nuisance in order to reduce the potential for the state to lose the benefits to the state's air transportation system that are provided by public use airports.

(c) A public use airport operation or any of the operation's appurtenances may not become a private or public nuisance by any changed condition in the vicinity of the locality that occurs after the public use airport operation operates continuously on the locality for more than one (1) year if the following conditions are met:

(1) The public use airport operation was not a nuisance at the time when the operation began operating at that locality.

(2) The public use airport operation is operated in accordance with the rules of the Indiana department of transportation, aeronautics section.

(3) There is no significant change in the hours of operation of the public use airport operation.

As added by P.L.2-2002, SEC.15.

IC 32-30-6-11

Continuous forestry operation; circumstances under which forestry

operation not a nuisance

Sec. 11. (a) This section does not apply if a nuisance results from the negligent operation of a forestry operation.

(b) For purposes of subsection (d), a forestry operation is considered to be in continuous operation if the locality supports an actual or a developing timber crop.

(c) A forestry operation that:

- (1) existed before a change in the land use or occupancy of land within one (1) mile of the boundaries of the locality; and
- (2) would not have been a nuisance before the change in land use or occupancy;

is not a private or public nuisance.

(d) A forestry operation that conforms to generally accepted forestry management practices and that has been in continuous operation is not a private or public nuisance as a result of any of the following:

- (1) A change in the ownership or size of the forestry operation.
- (2) Enrollment in a government forestry conservation program.
- (3) Use of new forestry technology.
- (4) A visual change due to removal of timber or vegetation.
- (5) Normal noise from forestry equipment.
- (6) Removal of timber or vegetation from a forest adjoining the locality.
- (7) The proper application of pesticides and fertilizers.

As added by P.L.82-2005, SEC.5.